

Final Order Denying Refund: 03-20211030
Withholding Tax
for the Tax Year 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Business' request for a refund was not timely filed and was outside of the statute of limitations. Therefore, the Department's refund denial was correct.

ISSUE

I. Withholding Tax - Refund.

Authority: IC § 6-3-1-3.5; IC § 6-3-4-8; IC § 6-3-4-8.1; IC § 6-8.1-9-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); [45 IAC 3.1-1-101](#).

Taxpayer protests the denial of refund.

STATEMENT OF FACTS

Taxpayer is an Indiana based manufacturing company. Taxpayer was required to collect withholding taxes and file those taxes monthly with the Indiana Department of Revenue ("Department"). Taxpayer relied on payroll companies to collect and remit the required withholding taxes to the Department.

In June 2017, Taxpayer changed from Payroll Company A to Payroll Company B. During this month, Taxpayer paid withholding taxes three times in the approximate amounts of \$3000, \$500, and \$500. One of the \$500 payments resulted in an overpayment. Taxpayer was not aware an overpayment had occurred and believes the error was due to the switch in switched payroll companies.

Taxpayer requested a refund of \$500 in May 2021. In June 2021, the Department denied the refund stating it was outside the statute of limitations. Taxpayer protested the refund denial and requested resolution without a hearing. However, additional information was required, and the Department discussed the matter with Taxpayer's President. This Memorandum of Decision results. Additional facts will be provided as necessary.

I. Withholding Tax - Refund.

DISCUSSION

The issue is whether Taxpayer is entitled to a refund of its June 2017 overpayment of withholding taxes of approximately \$500. Taxpayer received a letter from the Department stating a refund for the withholding filing period ending June 30, 2017, was denied because the refund request was outside of the statute of limitations under IC § 6-8.1-9-1.

As a threshold issue, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. . . [I]n order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

An employer must collect withholding taxes and remit such taxes to the Department. IC § 6-3-4-8(a). Withholding amounts are collected based on the adjusted gross income tax rate for a person, the total local income tax rate the person is subject to under [IC 6-3-6](#), and the total amount of exclusions under IC § 6-3-1-3.5(a)(3) and IC § 6-3-1-3.5(a)(4). *Id.* Withholding returns are required to be made monthly, no later than thirty days after the end of the month. IC § 6-3-4-8(b). However, pursuant to IC § 6-3-4-8.1(a), if an entity is required to make a monthly return and remit withholding taxes under sections 8, 12, 13 and 15 of IC § 6-3-4, the returns and remittances must be filed twenty days after the end of the month if the average monthly remittance exceeds \$1,000 for the immediately preceding calendar year.

After filing monthly withholding returns, a withholding agent must also file an annual reconciliation of employer's withholding tax, also known as Form WH-3. [45 IAC 3.1-1-101](#). This form reconciles the total amount of tax withheld during the calendar year as reflected by the withholding statement. *Id.* Form WH-3 is due "not later than the last day of February, immediately following the end of the calendar year." *Id.*

Taxpayer requested a refund of an overpayment for the June 2017 withholding tax period, which was denied because the request was outside of the statute of limitations. A review of Taxpayer's account shows that it has always remitted the required withholding taxes in a timely manner. Per IC § 6-3-4-8.1(c), Taxpayer's withholding taxes for the June 2017 period were due on July 20, 2017, and Taxpayer remitted payments for this period on July 13, July 19, and July 20, 2017. All payments for the month were timely.

Taxpayer's annual reconciliation statement of withholding taxes for the 2017 tax year was due no later than the last day of February 2018, or February 28, 2018. Taxpayer filed a timely reconciliation return on January 30, 2018. In neither the monthly withholding filing nor the annual reconciliation did Taxpayer request the overpayment amount be refunded.

Taxpayer's President explained that it relied on the payroll companies to complete and file the monthly withholding returns. In June 2017, Taxpayer changed from Payroll Company A to Payroll Company B and believes the overpayment resulted from this change. Taxpayer again changed from Payroll Company B to Payroll Company C on December 31, 2020. Taxpayer was unaware of the overpayment of withholding taxes during either of the payroll company changes.

IC § 6-8.1-9-1(a) is clear that refund requests must be made within three years of the date of the payment or the date the return is due. Taxpayer made payments for the June 2017 withholding taxes on July 9, 13, and 20, 2017. Three years from the latest date is July 20, 2020.

Additionally, Taxpayer's Form WH-3 reconciling the withholding amounts for 2017 was due on February 28, 2018. Taxpayer filed its WH-3 on January 30, 2018. Three years from the payment date is January 30, 2021, and three years from the WH-3 filing due date is February 28, 2021.

Taxpayer did not request a refund until May 2021. Unfortunately, even calculating the statute of limitations from the latest date possible of February 28, 2021, Taxpayer's protest is outside the required three-year statute of limitations as described under IC § 6-8.1-9-1(a). Thus, considering the documentation and explanation provided by Taxpayer, the protest is denied.

FINDING

Taxpayer's protest is denied.

June 14, 2022

Posted: 04/26/2023 by Legislative Services Agency
An [html](#) version of this document.